

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DONALD RAY WILLIAMS,

Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

Case No. 13-CV-04354-LHK

**ORDER RE MOTION PURSUANT TO
28 U.S.C. § 2255**

Re: Dkt. No. 1

Defendant filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 on September 19, 2013. ECF No. 1. On that same day, Defendant also re-filed a notice of appeal of his sentence. On December 19, 2013, United States District Judge Jeremy Fogel issued an order deferring consideration of Defendant's § 2255 motion in light of his simultaneous direct appeal. *See* No. 08-cr-00040, ECF No. 414. Judge Fogel further ordered that the motion would be "administratively terminated pending disposition of the appeal. Following issuance of the mandate by the Court of Appeals, the motion will be reinstated upon Defendant's request." *Id.*

On March 21, 2014, the Court of Appeals issued its mandate in Defendant's direct appeal. *See* No. 08-cr-00040, ECF No. 425. The Court of Appeals dismissed Defendant's appeal for

1 failure to prosecute. *Id.*

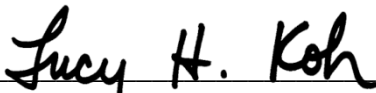
2 On December 16, 2014, this matter was reassigned to the undersigned judge.

3 In the nearly 10 months since the Court of Appeals issued its mandate on March 21, 2014,
4 Defendant has not requested reinstatement of his § 2255 motion. The Court therefore dismisses
5 without prejudice Defendant's § 2255 motion for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

6 The Clerk shall close the file.

7 **IT IS SO ORDERED.**

8 Dated: January 6, 2015

9 
10 LUCY H. KOH
11 United States District Judge

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